




Washington's Open Space Taxation Act (chapter 84.34 RCW)

A Review from the Perspective of Farmland Protection

Interest in Current Use Tax Program


Intersecting Factors in 2008

- ◆ Sophisticated analysis by County Assessors using Geographical Information Systems (GIS).
 - ◆ Performance audits by the Department of Revenue (DOR) and by County Assessors – resulting in notification to landowners of additional tax obligations.
 - ◆ County governments' need for increased tax dollars for county operations.
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- ◆ High levels of concern that all exemptions -"tax shifts"- conform tightly to law and regulations.
- ◆ Aging generation of landowners who entered their properties in the Current-Use program in the 1970s without a full understanding of the tax consequences.
- ◆ Recent and new property owners, including many urban "refugees" with significant financial resources, who desire to pay minimal taxes, but have little or no land management experience. They see the Open Space program as a way to reduce their tax burden.

- ◆ Counsel from some Assessors to new owners to not continue the Current-Use status of their property unless they plan on holding and managing the property in accordance with current use requirements for at least 10 years.
- ◆ Concern about cost-effective and fair ways to provide incentives for keeping farmland in commercial agricultural production.


Historical Context

- ◆ 1967 Legislative Council:
Preferential Current-Use tax should be *the primary state-level mechanism* to preserve and maintain farms and forests for the future.
 - ◆ House Joint Resolution No.1 (Senate 44-0 and House 84-9) placed on the statewide ballot.
 - ◆ Constitutional amendment - Section 11, Article 7
 - ◆ November 5, 1968, voters overwhelmingly approved.
68 % in favor (705,978 votes) 32% against (335,496)
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Chapter 84.34 RCW


1970-1973; Many Amendments 1979-2005

"It is in the best interest of the state to *maintain, preserve, conserve and otherwise continue in existence, adequate open-space lands for the production of food and fiber* and forest crops and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens....

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Chapter 84.34 RCW (continued)

The Legislature further declares that assessment practices must be so designed as to permit the ***continued availability of open-space lands*** for these purposes, and it is the intent of this chapter, so to provide. The Legislature further declares its intent that farm and agricultural lands shall be ***valued on the basis of their value for use*** as authorized by section 11 of article 7 of the Constitution of the state of Washington."

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Statewide Trend Lines for Program Enrollment and Farm Parcel Size:

◆ Year	Units (applicants)	Acreage	% in Farm/Ag	Average Parcel Size (acres)
◆ 1975	8,533	2,179,051	98.5 (1978)	255
◆ 1980	31,601	7,459,090	98.5	236
◆ 1985	38,641	10,200,390	n/a	264
◆ 1990	45,475	11,507,709	n/a	253
◆ 1995	48,411	11,203,257	n/a	231
◆ 2000	(not available)	12,069,061	98.7	n/a
◆ 2005	58,367	11,551,815	98.4	198
◆ 2007	58,707	11,484,216	98.2	196

How Chapter 84.34 RCW Works

A. FARM AND AGRICULTURAL LAND ((3) TYPES)

Land Parcels 20 acres or larger

- ◆ The property must be devoted primarily to the production of livestock or agricultural commodities ***for commercial purposes***
- ◆ Land was used, prior to the date of application for classification as farm and agricultural land and on an ongoing basis, for farming and that the owner or lessee ***intends to make a profit*** from their activities.

Land Parcels less than 20 acres but larger than 5

- ◆ The land must be “devoted primarily to agricultural uses.”
- ◆ The property must produce a stipulated annual income: \$200 per acre per year for three of the five calendar years preceding the date of application

Land Parcels 5 acres or smaller

- ◆ Gross income of \$1,500 per year for three of the five years preceding the date of application

B. OPEN SPACE/FARM AND AGRICULTURAL CONSERVATION LAND

- ◆ “Land previously classified under farm and agriculture classification that no longer meets the criteria and is reclassified under open-space land;”
- ◆ “Traditional farmland” that was never classified, that has *not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.*”

County Assessor's Duties Under Chapter 84.34 RCW When Reviewing and Monitoring Farm and Agricultural Properties

- ◆ Designated authority for approving or disapproving applications.
- ◆ Require applicant to provide a broad range of information to assure that land is, in fact, commercially farmed.
- ◆ Determination based on historical and current-uses of the land. Generally, ***prospective use of the land may not be relevant evidence*** in acting upon an application.
- ◆ Assessor cannot impose conditions or restrictions regarding the approval of an application for farm and agricultural classification.

- ◆ Assessor must consider relevant zoning ordinances and regulations. If a zoning ordinance prohibits the farm activity, the Assessor shall deny the application.
- ◆ A basic premise of the statute is to tax property on the basis of Current-Use in return for the owner's promise to commercially farm the land. The requirement of farming for commercial purposes with its profit intent requirement is a continuing obligation of the owner, and ***the classification can be removed any time the condition is not met.*** Continued and regular use for a commercial farming activity is required and the ***Assessor has a statutory obligation to remove property from classification when it no longer meets the statutory requirement.*** Board of Tax Appeal's decision (Gehlen v. Cook (BTA Docket Nos. 60196 and 60197))

Penalties for removing or withdrawing land from Current Use Classification -“Additional tax”

◆ Withdrawal

Owner must give Assessor a two-year notice of request for withdrawal.

Additional tax equals the difference between the property tax paid as “farm and agricultural land” and the amount of property tax that would have been otherwise due and payable if the land had not been classified ***for the past seven years***. PLUS interest at the rate is 1% per month or 12% per year.

◆ Change in Use and Removal

Voluntary – 60 day notice - The assessor calculates additional tax and applicable interest as if the owner had given two years' notice AND there is an additional 20% penalty on the total amount.

Assessor initiated - If the owner has not met the income or intent-to-farm requirements of the current use farm and agricultural classifications, the Assessor, at his or her discretion, can remove the land from classification and assess the additional tax, applicable interest, and a 20% penalty on the total amount.


◆ Distribution of Additional Tax Revenues

The additional taxes collected upon withdrawal or removal of land from current use classification are distributed by the county treasurer in the same manner and proportion as current taxes applicable to the property.

Interest and the 20% penalty, if imposed, go directly to the county current expense fund.

Determining the Productive Value of Farm and Agricultural Land in Current-Use Classification

“The true and fair value of farm and agricultural land shall be determined by consideration of the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates.”

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County Advisory Committees


- ◆ The county legislative authority shall appoint a five member committee representing the active farming community within the county to serve in an ***advisory capacity*** to the Assessor in implementing assessment guidelines as established by the Department of Revenue for the assessment of open space, farms and agricultural lands, and timber lands classified under this chapter. (RCW 84.34.145)
- ◆ The advisory committee shall not give advice regarding valuation or assessment of specific parcels of land. However, it may supply the Assessor with advice on typical crops, land quality and net cash rental assessments to assist the Assessor in determining appropriate values. (WAC 458-30-345(3))


Conservation Futures Authority (RCW 84.34.200 - 240)

The Legislature finds that the *haphazard growth and spread of urban development is encroaching upon, or eliminating, numerous open areas and spaces of varied size and character, including many devoted to agriculture The acquisition of interests or rights in real property for the preservation of such open spaces and areas constitutes a public purpose* for which public funds may properly be expended or advanced.

Legislature understood that preferential tax treatment, in and of itself, might not be a sufficient means to preserve and maintain strategic land resources.

Seeking Consistency - Interaction between the State Department of Revenue and County Assessors

- ◆ DOR seeks to assure that there is state-wide consistency of application of the law.
 - ◆ *Inherent reality of our state's governmental structure is that Assessors are independently elected officials with discretion as to the methodology used to fairly assess and value taxable real property in their jurisdiction.*
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- ◆ The recent DOR reviews reveal that some counties have never audited their Current-Use program.
 - ◆ In other cases, a newly elected Assessor will come into office and “feel like they've walked into a mess.” Re-examine properties classified as Current Use and finding parcels that do not meet the provisions of the law or the regulations.
 - ◆ Other counties have fully functioning programs that are models of implementation.
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County by County and State Values of "Current Use" and "Fair and True Use" Values

True and fair value in the current use value and the difference between these values on a county by county basis.

2006 Valuation of Current Use Land by County

Agricultural, Timber and Open Space Lands

Approved for Current Use Assessment

Adapted from: Property Tax Statistics, 2006; Washington Department of Revenue, Table 19, p.33

County	Applications as of 1/1/06	Acres	Acres/ app	True and Fair Value (TFV)	Current Use value (CUV)	Difference	Ratio CUV/ TFV	% value reduction
Adams	1550	1,075,621	694	\$453,256,700	235,236,000	\$218,236,000	52%	48%
Asotin	2,175	276,102	127	35,292,383	14,347,332	20,945,051	41%	59%
Benton	1,206	592,642	491	472,389,600	183,327,030	289,062,570	39%	61%
Chelan	430	30,087	70	60,243,937	15,656,871	44,587,066	26%	74%
Columbia	1,907	30,609	16	339,149,029	58,838,993	280,310,036	17%	83%
Clark	4,028	72,560	18	514,331,420	16,479,120	497,852,300	3%	97%
Columbia	553	314,526	569	184,242,489	75,367,499	108,874,990	41%	59%
Cowlitz	758	18,464	24	90,405,300	10,067,755	80,337,545	11%	89%
Douglas	2,088	896,788	429	356,184,700	140,685,000	215,499,700	39%	61%
Ferry	247	48,204	195	55,010,647	2,969,328	52,041,319	5%	95%
Franklin	1,995	595,891	299	620,506,800	301,784,100	318,722,700	49%	51%
Garfield	569	319,215	561	137,577,659	73,832,479	63,745,180	54%	46%
Grant	4,110	1,038,234	253	951,842,510	416,567,200	535,275,310	44%	56%
Grays Harbor	456	24,462	54	51,793,484	15,791,647	36,001,837	30%	70%
Island	562	17,066	30	223,928,523	12,985,646	210,942,877	6%	94%
Jefferson	187	8,220	44	37,090,185	5,528,015	31,562,170	15%	85%
King	1,879	40,806	22	812,838,821	196,404,769	616,434,052	24%	76%
Kitsap	415	6,740	16	185,140,230	64,131,090	121,009,140	35%	65%
Kittitas	988	199,850	202	500,902,698	64,769,488	436,133,210	13%	87%
Klickitat	707	536,837	759	317,838,180	53,896,115	263,942,065	17%	83%

County	Applications as of 1/1/06	Acres	Acres/ app	True and Fair Value (TFV)	Current Use value (CUV)	Difference	Ratio CUV/ TFV	% value Reduction
Lewis	2,538	85,921	34	268,725,886	31,070,448	237,655,438	12%	88%
Lincoln	2,703	1,244,496	460	465,276,300	228,744,590	236,520,710	49%	51%
Mason	618	15,304	25	78,296,220.00	7,552,215	70,744,005	10%	90%
Okanogan	2,662	568,639	214	595,282,200	49,501,686	545,780,514	8%	92%
Pacific	515	40,271	78	62,655,500	11,26,395	51,429,105	18%	82%
Pend								
Oreille	2,133	28,202	13	44,663,254	2,619,977	42,043,277	6%	94%
Pierce	1,484	43,760	29	639,132,300	98,004,244	541,128,056	15%	85%
San Juan	435	17,309	17	315,721,090	74,949,800	240,771,290	24%	76%
Skagit	2,589	106,143	41	645,772,300	164,892,225	480,880,075	26%	74%
Skamania	247	4,860	20	31,949,440	4,214,467	27,734,973	13%	87%
Snohomish	1,488	62,545	42	678,051,100	118,399,800	559,651,300	17%	83%
Spokane	2,800	559,779	200	688,879,190	69,015,680	619,863,510	10%	90%
Stevens	929	80,748	87	72,721,814	14,818,904	57,902,910	20%	80%
Thurston	785	40,554	52	238,445,900	20,930,241	217,515,659	9%	91%
Wahkiakum	211	10,048	48	38,187,970	7,862,600	30,325,370	21%	79%
Walla								
Walla	1,318	708,726	538	477,864,956	240,544,300	237,320,656	50%	50%
Whatcom	2,905	111,446	38	894,755,780	158,462,285	736,293,495	18%	82%
Whitman	2,374	1,247,422	525	741,589,540	398,408,600	343,180,940	54%	46%
Yakima	3,678	396,077	108	561,636,248	241,487,324	320,148,924	43%	57%
TOTAL	59,212	11,515,175	194	\$13, 939,572,283	\$3,901,382,258	\$10,038,190,025	72%	28%

Counties with Greatest Amount of Current-Use Farm Land (> ½ million acres)

◆ Whitman	1,247,422
◆ Lincoln	1,244,496
◆ Adams	1,076,621
◆ Grant	1,038,234
◆ Douglas	896,788
◆ Franklin	595,891
◆ Benton	592,642
◆ Okanogan	568,639
◆ Spokane	559,779
◆ Klickitat	536,837

10 counties = 8,357,349 acres



Counties with the Least Amount of Current-Use Farmland (< 30,000 acres)

◆ Skamania	4,860
◆ Kitsap	6,740
◆ Jefferson	8,220
◆ Wahkiakum	10,048
◆ Mason	15,304
◆ Island	17,066
◆ San Juan	17,309
◆ Cowlitz	18,464
◆ Grays Harbor	24,462
◆ Pend Oreille	28,202
◆ Chelan	30,087
◆ Clallam	30,609
12 counties = 211,371 acres	


Counties in Which the Value Reduction is Greatest (> 85%)

◆ Clark	97%
◆ Ferry	95%
◆ Island	94%
◆ Pend Oreille	94%
◆ Okanogan	92%
◆ Thurston	91%
◆ Spokane	90%
◆ Mason	90%
◆ Cowlitz	89%
◆ Lewis	88%
◆ Kittitas	87%
◆ Skamania	87%
◆ Pierce	85%
◆ Jefferson	85%

Identified Areas of Confusion, Ambiguity, or Opportunity

(1) What is farmland and what is commercial agriculture??

Policy Choices

- ◆ Retain current definitions spread among four different RCW statutes, as well as the DOR rule WAC 458-30-200.
 - ◆ Review DOR rules to bring them in line with farm and agricultural definitions of other statutes.
 - ◆ Resolve the differences in the definitions of commercial agriculture across all RCWs and WACs for consistency and clarity.
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2) What is the relationship of the Growth Management Act (chapter RCW 36.70A) and the Open Space Taxation Act (chapter RCW 84.34 RCW)?

Policy Choices

- ◆ No action. Allow both laws to function as currently set up.
- ◆ Recommend that CTED (administrator of the GMA) and the Department of Revenue set up agency level discussions to resolve policies and mechanisms for agricultural land protection.
- ◆ Recommend a legislatively designated “blue-ribbon” commission to address the opportunities inherent in integrating these two laws with Conservation Commission, CTED, Department of Agriculture and Department of Revenue support.

- 3) Should the exemption for "feeding, raising, breeding and selling of livestock" require that all four activities be carried on to qualify as "livestock production" and "farming" for Current-Use consideration?

Policy Choices

- ◆ Allow current regulations to remain and let sleeping horses lie.
- ◆ Clarify DOR WAC definitions to be consistent with the 2007 definitions in RCW 36.70A.560 of "producing, breeding or increasing agricultural products."
- ◆ Review and amend laws and regulations to include clearer criteria regarding livestock production and clarify whether horses constitute "an agricultural product."


4) What is the definition of “ownership” for a commercial farming operation?

Policy Choices

- ◆ Continue to use current statutes in chapter 84.34 RCW and DOR definition of “owner.”
- ◆ Recommend a DOR agency level review of ownership requirements and the consequences of changing the operating definition for farm operations with recommendations for changes in the rule (WAC).
- ◆ Change relevant statutes (e.g. RCW 84.34.020) to allow the aggregation of contiguous properties to qualify as commercial farming for farm and agricultural land classification to simplify, clarify and achieve legislative intent.


5) With 20 or more acres, what is considered commercial agriculture?

Policy Choices

- ◆ Continue to use existing statutes and regulations (with consideration for definition change for livestock production).
 - ◆ Clarify DOR regulations to reflect the language of the BTA decision cited above re: “continuous and regular.”
 - ◆ Seek changes in law to clarify “commercial agriculture” and definition of “continuous and regular.”
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6) On properties of less than 20 acres, are the criteria specific enough for commercial agriculture?

Policy Choices


- ◆ Retain current income standards and review procedures.
 - ◆ Pursue inter-agency review of criteria for reviewing and monitoring small farm performance and check income standards for feasibility.
 - ◆ Incorporate review of farm viability for properties of less than 20 acre into the proposed analysis of the interrelationship of the GMA and Open Space Act.
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7) What else could Farm Advisory Committees do to assist in farmland conservation?

Policy Choices

- ◆ Retain current role of Farm Advisory Committee.
 - ◆ Develop a strategy with Washington State Association of County Assessors (WSACA) to increase engagement with local farm representatives in reviewing farm and agricultural properties of 20 acres or smaller.
 - ◆ Seek legislative direction to enlarge the role of Farm Advisory Committees.
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8) Could the incentives for Open Space taxation be improved? An initial proposal:

- ◆ Extend contract term from 10 to 20 years (or longer) with sliding scale reduction in property tax.
 - ◆ Re-structure withdrawal penalty so longer term commitment to agriculture = lower penalty at withdrawal.
 - ◆ Increase penalty for short-term enrollment to discourage speculation with buyer paying penalty.
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- ◆ Focus revised program on high conversion potential counties or regions
 - ◆ Build in “right of first refusal” or “conservation easement option”
 - ◆ Keep county’s fiscally whole by state paying in lieu property taxes and weed control assessments as per RCW 79.70.130
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